IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 195 OF 1988

1. Smt.Akkabai Bapurao Power (since deceased) through L.R's.

   1A) Shri Mayuresh Anant Power,
   Age adult, occu.Service,

   1B) Miss Shona Anant Power,
   Age Adult, occ.service,

   Both R/o. Power Bunglow,
   New Siddhivinayak Mangal
   Karyalaya, Pratibha Nagar,
   Kolhapur

2. Shankar Hari Patil, since deceased by his heirs and legal representatives :-
   2-A) Smt.Muktabai Shankar Patil
   2-B) Bhau Shankar Patil
   2-C) Dattu Shankar Patil
   2-D) Pandurang Shankar Patil
   2-E) Ganapati Shankar Patil
   2-F) Hindurao Shankar Patil
   All residing at:-
   R/o. Mukteshwar, Tal.: Gagan Bawada, District Kolhapur.
   2-G) Sau.Radhabai Dinkar Kolhe
   R/o. Yavluj, Tal.Panhala,
   Dist.Kolhapur.
   2-H) Sau.Akkatai Ramchandra Dawang
   R/o.Punal, Tal.Panhala,
   Dist.Kolhapur.
   2-I) Sau.Banutai Yuvaraj Patil
   R/o.Koparde, Tal.Karvir,
   Dist.Kolhapur.
   2-J) Sau.Sonutai Mano Patil
   R/o.Konge, Tal.Gagan Bawada,
   Dist.Kolhapur.

3. Lahu Hari Patil
   since deceased by his legal heirs and representatives :-
   3a) Smt.Hausabai Lahu Patil (widow)
   3b) Shri Balu Lahu Patil (son)

3c) Shri Tukaram Lahu Patil (son))
3d) Mrs.Mangal Sitaram Patil)
(Married daughter))
Nos.3a to 3c all are adults,)
Occ.Agriculturists.)
residing at Village Mukteshwar,)
Taluka - Panhala, Dist.Kolhapur)
)
and No.3d residing at Village)
Marali, Taluka - Panhala,)
Dist.Kolhapur)
)
4. Govind Hari Patil)
Agriculturist,)
Residing at Mutkeshwar, Taluka-)
Gagan-Bavada, Dist Kolhapur.)...Petitioners

V/s.

1. Lahu Vithu Kurne,)
(since deceased through his legal)
heirs and representatives))
)
1A. Smt.Ambubai w/o. Lahu Kurne,)
since deceased by her legal)
heirs and representatives;)
)
1A-(a) Shri Bhau Lahu Kurne,)
)
1A-(b) Shri Govind Lahu Kurne,)
)
1A-(c) Shri Hindurao Lahu Kurne,)
)
1A-(d) Smt.Sonubai w/o. Mahadeo Patil)
)
Nos.1a to 1d residing at)
Mukteshwar, Tal.Gagan Bawda,)
District - Kolhapur.)
)
1A-(e) Smt.Radhabai Tukaram Patil)
residing at Borgaon,)
Tarf Pohale, Taluka - Panhala,)
Dist.Kolhapur.)
)
1A-(f) Smt.Rajubai w/o. Balavant Mahadik)
r/o. Mahadikwadi, Kasaba Thane)
Taluka - Panhala, Dist.Kolhapur)
)
1A-(g) Smt.Chandrabai w/o.Madhu Mole,)
r/o. Khadole, Tal.Gagan Bawda,)

Dist.Kolhapur.)
)
2. The Maharashtra Revenue Tribunal,)
through its member Shri M.R.Deshpande)...Respondents

ALONGWITH

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Both R/o. Power Bunglow,)
New Siddhi Vinayak Mangal)
Karyalaya, Pratibha Nagar,)
Kolhapur)...Petitioners

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r/o. Khadole, Tal.Gagan Bawda,)
Dist.Kolhapur.)
)
2. The Maharashtra Revenue Tribunal,)
through its member Shri M.R.Deshpande)...Respondents

Mr.N.V. Bandiwadekar for the Petitioners.
Mr.S.M. Kamble for Respondent Nos.1(b) to 1(g).
None for other Respondents.

CORAM : V.M. KANADE, J.

DATED : SEPTEMBER 13, 2007

ORAL JUDGMENT :-

. Heard the learned Counsel for the petitioners and the learned Counsel for the respondents.

2. Both the petitions can be disposed of by passing a common order since the parties in both the petitions are same and the petitioners in both these petitions are challenging the order passed by the MRT in Revision Application Nos.MRT-KP-14/1986 and MRT-KP-15/1986 whereby by the said judgment and order, the Tribunal was pleased to set aside the order passed by the lower authorities and directed the trial court to fix the purchase price.

3. It is necessary to give a brief background of this case since the chequered history in respect of this

litigation is that one Muktabai w/o. Bhaurao Jadhav was the owner/landlady of agricultural lands situated at Village Khadule bearing survey no.23 admeasuring 2 acres 4 gunthas and survey no.24 admeasuring 4 acres situated at village Mukteshwar, both in Taluka Gaganbawda. The petitioner no.1 is a daughter of landlady.

4. It is the case of the petitioners herein that petitioner nos.2 to 4 were in possession of the land as tenants and they took the help of respondent no.1 to help them in the cultivation of the land. However, the name of respondent no.1 was entered in the tenancy column of 7/12 extract without giving notice to petitioner nos.2 to 4. The proceedings initiated under Section 32G were postponed since the landlady was a widow from the cut off date i.e. from 1.4.57. Sometime in 1961, the lands were sold by the landlady to the petitioner nos.2 to 4 and the sale deed was registered on 20.7.61. Thereafter on 27.6.63, the landlady died giving lands to petitioner no.1 as the only legal representative. It is the case of the petitioners that petitioner no.1 was also a widow at that time. Further, it is submitted that the mutation entry was made and certified by the revenue authorities and the name of

landlady Muktabai was deleted and in 1964-65, the name of respondent no.1 was also deleted. In 1975, 32G proceedings were initiated. Respondent no.1 claimed that he was a joint tenant in respect of both the lands. However, the said proceedings were dropped on 6.2.75 on the ground that the land bearing survey no.24 was leased for sugar-cane cultivation and also on the ground that the landlady was a widow and hence, the Tiller's day was postponed. The respondent no.1 preferred an appeal. This appeal was allowed by the Assistant Collector and the matter was remanded for fresh hearing. ALT again dropped the proceedings under Section 32G on 22.8.77 on the ground that the landlady was a widow on Tiller's day and also on the ground that land survey no.24 was a sugar-cane land and therefore, the provisions of Section 32G(1) are not applicable. Against this order, the respondent no.1 preferred an appeal before the Assistant Collector. This appeal was allowed and it was held that the land was not leased for sugar-cane and further held the sale transaction between the original landlady Muktabai and Shankar Hari Patil, petitioner no.2 was invalid. In respect of land bearing survey no.23, the case was again remanded to ALT since no findings were recorded in respect of said land.

5. Against this order, both the parties filed revision application to the MRT, Kolhapur. The Revision Application filed by the petitioner nos.2 to 4 was dismissed and in the revision filed by the respondent no.1, it was held that the respondent no.1 was a joint tenant in respect of land survey no.24 alongwith petitioner nos.2 to 4. Against this order, petitioners filed Writ Petition No.3234/82. This Court (Coram : C.S. Dharmadhikari, J.) by judgment and order dated 15.6.83 was pleased to dismiss the writ petition by passing a detailed order. The findings recorded by this Court in this writ petition will be considered at the subsequent stage.

6. The judgment given by this Court assumes importance because most of the contentions which are now sought to be raised by this petition were already decided by this Court in the said writ petition and inspite of the matter being finally concluded by virtue of the judgment and order of this Court, thereafter, several applications were made and orders were passed which are referred to hereinafter. Thereafter, inspite of the order passed by this Court on 14th October, 1983

i.e. almost four months after the judgment was delivered by this Court in the aforesaid writ petition, the petitioner no.1 issued notice and terminated the tenancy of the respondent in respect of land survey no.23 on the ground of arrears of rent. An application was filed for possession of the land bearing survey no.23. Thereafter on 7.6.1984 inspite of the order passed by this Court in the aforesaid writ petition, the ALT postponed the proceedings under Section 32G on the ground that landlady Akkatai was a widow. However, it fixed the price of both the lands at Rs.2800/-. Thereafter on 31.1.85, the respondent was directed to restore possession of land in respect of survey no.23 to the petitioner on the ground that he had failed to pay the arrears of rent and therefore, liable to restore the possession to the landlady.

7. Against this order, the respondent filed Tenancy Appeal before the Assistant Collector. The Collector dismissed the appeal and confirmed the order passed by the lower court whereby the proceedings under Section 32G were dropped and the possession in respect of survey no.23 was restored. Against both these orders, respondent no.1 filed two revision applications before

the MRT. The MRT, however, set aside the order passed by the ALT and SDO and allowed the application filed by respondent no.1 and sent the matter back to the trial court for fixing of purchase price. Being aggrieved by the aforesaid order passed by the MRT, the present petitions have been filed.

8. The learned Counsel for the petitioners submitted that MRT had erred in setting aside concurrent finding of fact which were recorded by the lower authorities and further erred in exercising jurisdiction not vested in it by law. in it by allowing the revision application. It is submitted that the respondent no.1 had stated in his evidence that he was dispossessed by the petitioner nos.2 to 4 after the land was sold by petitioner no.1 to petitioner nos.2 to 4 in 1960 in respect of survey no.24 and therefore, respondent no.1 was not in possession of survey no.24 and he could not be the deemed purchaser of the said land. In support of the said submission, he relied on the unreported judgment of this Court in respect of Special Civil Application No.636/66 dated 20th December, 1966 whereby this Court had held that since the tenant was not in possession of the land, he could not get the benefit of

provisions of Section 32G, therefore, he need not be declared as deemed purchaser. The learned Counsel then submitted that MRT had ignored the fact that intimation which is required to be given under Section 32F(1A) of the said Act was not given and this proviso being the mandatory provision, an order under 32G could not have been passed and as such proceedings under section 32G not to have been initiated. He submitted that he is relying on the judgment of the Apex Court in the case of **Balvant N. Viswamitra and others v/s. Yadav Sadashiv Mule (Dead) through LRs. and others, reported in (2004)** 8 SCC 706 and judgment in the case of **Harshad Chimanlal Modi v/s. DLF Universal Ltd. and another, reported in (2005) 7 SCC 791.** He submitted that the lower authorities did not have jurisdiction to proceed with the fixation of purchase price since the mandatory provision under Section 32F(1A) was not complied and therefore, the orders passed by the lower authorities were void ab-initio and was nonest. He submitted that therefore, they did not have the inherent jurisdiction to initiate the proceedings in the absence of intimation being given by the respondent no.1 as also was contemplated under Section 32F(1A) of the said Act. He submitted that though this issue was not raised by the

petitioners earlier, it was open for the petitioners to argue the point of inherent lack of jurisdiction at any stage.

9. The learned Counsel for the respondent, on the other hand, submitted that though the issue was finally concluded by the judgment and order of this Court in Writ Petition No.3234/82, thereafter, the ALT had illegally dropped the proceedings. It is submitted that further proceedings which were initiated by the petitioners herein after judgment and order was passed by this Court, were clearly an abuse process of law and ought not to have been considered by the lower authorises, therefore, MRT was justified in setting the earlier order.

10. The submission of the petitioners cannot be accepted. It is a classic case where the tenants have been deprived of legitimate claim which the legislature sought to give to the tenants under the provisions of BT&AL Act. More than 50 years have passed and yet inspite of the fact that the case was finally concluded by virtue of judgment and order of this Court dated 15th June, 1983, frivolous proceedings were initiated by the

tenants and as a result, inspite of having an order in his favour, the respondent was unable to enjoy the land peacefully which belonged to him under the provisions of BT&AL Act. In the present case, it would be relevant to refer to the judgment and order of this Court in Writ Petition No.3234/82. In the judgment, it is submitted that the writ petition pertained to land survey nos.23 and 24 situated at village Mukteshwar and Khadole, District Kolhapur. In the said writ petition, it was argued that the provisions of Section 43(A)(1)(b) was not applied since the land survey no.24 was leased for the purpose of growing sugar-cane on the land. This argument was negatived by this Court by holding that both the authorities had recorded a concurrent finding of fact and therefore, it was not open for the petitioners to challenge the said concurrent finding by invoking writ jurisdiction of this court. The finding, therefore, was confirmed by this Court. Secondly, again for the first time, it was argued that by virtue of provisions of Section 32F, since effective steps were not taken by the tenant, he could not claim interest in the said land. It is necessary to note that this argument was also not accepted. The petitioner was not permitted to raise this contention which was raised for

the first time in the High Court. Further, the Court also observed that apart from the fact that the petitioner was not permitted to raise this question, it also observed that these contentions being the mixed question of fact and law, could not be permitted to be raised during the course of the argument. Therefore, all the contentions which are now sought to be raised again in this petition were already argued in the said petition and the subject matter was also the same. However, inspite of the judicial order passed by this Court, the landlady again filed proceedings for postponement of 32G proceedings on the ground that she is a widow. It is an admitted position that original landlady Muktabai was a widow on the cut off date i.e. 1.4.57 and therefore, the proceedings were postponed and after hearing both, proceedings again commenced and order was passed in favour of the tenant which was finally confirmed by this Court in Writ Petition No.3234/82. It is further well settled that proceedings under 32G cannot be postponed on more than one occasion and therefore, the proceedings which were dropped by ALT on the ground that Muktabai was a widow, obviously was illegal and such a proceeding are not contemplated under the provisions of BT&AL Act. Secondly, the proceedings

which were initiated by the petitioner no.1 under the provisions of Section 14 read with Section 29 of the BT&AL Act also could not have been initiated since already in June 1983, this Court had finally held that respondent no.1 was a deemed purchaser in respect of both these lands. Inspite of this order, the lower authorities continued to pass various orders in various proceedings which were taken out by the petitioners herein only with a view to protract the proceedings. The MRT has considered all these aspects and has accordingly set aside the orders passed by the ALT and confirmed by the Sub-Divisional Officer. The MRT has held that after the matter was finally concluded by this Court, it was not open for the petitioner to reagitate the issue again before different forum under different provisions.

11. The submission of Shri Bandiwadekar appearing for the petitioners that the authorities did not have inherent jurisdiction to pass an order under 32G since no intimation was given under Section 32F(1A) of the said Act, also cannot be accepted. The ratio of the two judgments on which reliance was placed is absolutely not applicable to the facts of the present case. Section

32F(1A) contemplates that after the period of disability is over, tenant has to give intimation to the landlord who has an intention to purchase the land. The question whether intimation is given or not, is obviously a question of fact. This question having been finally decided by the lower authorities in favour of respondent no.1, it cannot be said, therefore, that the lower authorities did not have inherent jurisdiction to pass an order under Section 32G. Similarly, the ratio of the judgment in Special Civil Application No.636/66 on which reliance is placed by the learned Counsel for the petitioners also will not apply to the facts of the present case. In the said case, the facts were that tenant was not in possession of the land and therefore, the Court observed that that being the position, it will not be possible to pass an order in favour of the tenant under Section 32G of the said Act. It was observed in the said case :

> "A tenant who is unlawfully dispossessed has first to ask for restoration of possession and it is only if he succeeds in getting an order for possession that he can say that he is willing to purchase the land. That is what respondent 1 will hereafter be entitled to do and I have no doubt that the Tribunal charged with the duty of holding an inquiry under section 32-P will not shut its eyes to the incidents that have happened between the death

of Laxmibai and this day."

12. In my view, ratio of this judgment would not apply to the facts of the present case. This Court having considered all these issues and after having directed the Tribunal to fix the purchase price, it is not now open for the petitioner to contend that the tenant was not in possession. The learned Counsel for the petitioners had relied on the observation made by the ALT wherein it was recorded that the tenant had stated that he was dispossessed by the petitioner nos.2 and 3 in respect of survey no.24 after the original landlady sold the land to petitioner nos.2 to 4 in 1961. The contention of the petitioners that respondent no.1 was not in possession, has not been argued before the Court in Writ Petition No.3234/82 and as such, it is not open for the petitioners to contend that the respondent no.1 was dispossessed in 1961 for the first time in this Court. It is clearly an attempt to again protract the proceedings in order to deprive the tenant of his legal right to be the deemed purchaser of the said land.

13. In the result, writ petition is dismissed. Order passed by the MRT in both the revision is

confirmed. I am informed that from the various proceedings, it appears that at one stage, ALT had already fixed the purchase price. ALT is directed to complete the process, as expeditiously as possible and in any case, within a period of two months from today.

14. At this stage, the learned Counsel for the petitioners seeks stay of eight weeks on the judgment of this Court. This request is declined.

(V.M. KANADE, J.)